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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/482,283	06/07/1995	ROBERT C. THOMPSON	04189.0083-0	2193

22832 7590 02/03/2003  
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EXAMINER	
SPECTOR, LORRAINE	
ART UNIT	PAPER NUMBER
1647	40

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

☒ Responsive to communication(s) filed on 11/18/02

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☐ Claim(s) 1, 17-25, 37, 39-138 is/are pending in the application.

Of the above claim(s) 1, 17-21, 38 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 22-25, 37, 39-138 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claim(s) 1, 17-25, 37, 39-138 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

**Part III: Detailed Office Action**

Claims 22-25, 37 and 39-138 are under consideration.

5 **Formal Matters:**

The new title of the invention is acknowledged.

**Drawings:**

10 1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 11/18/02 have been approved by the Examiner. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

15 **Oath/Declaration:**

The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

20 Non-initialed alterations have been made to the oath or declaration. See 37 C.F.R. § 1.52(c) and 1.57).

The Residence and Country of Citizenship of inventor R.C. Thompson have been altered without initialing.

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**Double Patenting Rejections:**

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy

reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. § 3.73(b).

Claims 22-25, 37, and 39-138 are rejected under the judicially created doctrine of double patenting over the claims of prior U.S. Patent No. 5,075,222, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent for reasons cited in the previous Office Action, mailed 1/30/98, at page(s) 4-5.

Applicants intent to file a terminal disclaimer to overcome this rejection is noted.

**Advisory Information:**

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

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period for reply expire later than SIX MONTHS from the mailing date of this final action.

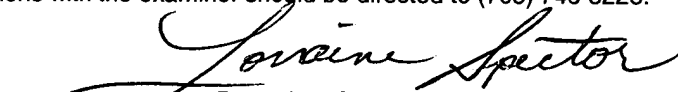
5 Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Lorraine M. Spector, whose telephone number is (703) 308-1793. Dr. Spector can normally be reached Monday through Friday, 9:00 A.M. to 5:30 P.M.

10 If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Gary L. Kunz, at (703)308-4623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at telephone number (703) 308-0196.

15 Certain papers related to this application may be submitted to Group 1800 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1 (CM1). The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

20 Official papers filed by fax should be directed to (703) 872-9306 (before final rejection) or (703)872-9307 (after final). Faxed draft or informal communications with the examiner should be directed to (703) 746-5228.

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Lorraine Spector, Ph.D.  
Primary Examiner

LMS  
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1/31/03